APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,353	02/23/2004	Kenneth L. Miller	075234.0131	2325

			EXAMINER

5073   7590   01/08/2007
BAKER BOTTS L.L.P.
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

	EXAMINER
	HSU, RYAN

ART UNIT	PAPER NUMBER
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	01/08/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 01/08/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail1@bakerbotts.com
PTOmail4@bakerbotts.com
glenda.orrantia@bakerbotts.com

	Application No.	Applicant(s)
Office Action Summary	10/784,353	MILLER, KENNETH L.
	Examiner	Art Unit	
	Ryan Hsu	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>09 May 2006</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-29</u> is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-29</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)	4) ☐ Interview Summary (PTO-413)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)	5) ☐ Notice of Informal Patent Application
Paper No(s)/Mail Date <u>6/9/06</u>.	6) ☐ Other: _____ .

DETAILED ACTION

In response to the Request for Continued Examination (RCE) under 37 CFR 1.114 filed

on 5/9/06. Claims 1, 3-6, 9, 14-15, 17-19, 25, and 27 have been amended and claims 1-29 are

pending in the current application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 14-17, and 22-29 are rejected under 35 U.S.C. 102(e) as being

anticipated by Brenner et al. (US 5,830,068 A).

Regarding claim 1, Brenner discloses a method of wagering on horse races in an event

having races (*ie: a horse track facility*), the method comprising: predetermining a quantity of the

event's races to be included in a wager (*see col. 2: ln 45-50*); allowing a player to choose the

event's races to be included in a wager, wherein the player is required to choose a plurality of a

number of chosen races equal to the predetermined quantity of the event's races (*see col. 4: ln*

22-42, "pick-n" and "daily double" wagers of col. 6: ln 10-20); allowing the player to select a

winner for each of the chosen races, the selected winners included in the wager (*see col. 4: ln 30-*

35); and paying the player if a predetermined number of the selected winners win corresponding

chosen races (*see col. 4: ln 33-42*).

Regarding claims 6 and 29, Brenner discloses a method of wagering on horse races in an

event having a plurality of races, the method comprising: receiving information specifying a

predetermined number of event races to be included in a wager (*see col. 2: ln 45-50)*; selecting

event races to be included in the wager, the number of selected races equal to the predetermined

number of event races (*see col. 22: ln 42)*; selecting a winner for each of the selected races in the

wager (*see col. 4: ln 30-35)*; and receiving a payout if a predetermined number of selected

winners win corresponding chosen races (*see col. 4: ln 33-42)*. Additionally, Brenner discloses a

method of wagering on horses further comprising placing a bet on the selected winners (*see Fig.

13 and the related description thereof)*.

Regarding claim 9, Brenner et al. discloses a computer assisted method for administering

betting on a plurality of races within a racing event using a computer for assistance, comprising:

publishing race information associated with the racing event to a plurality of players for use in a

wager (*see col. 3: ln 30-67)*; establishing a predetermined quantity of the event races to be

included in the wagers (*see col. 4: ln 22-33)*; receiving from each of the plurality of players, the

number of races in the first selection corresponding to the predetermined winners corresponding

to at least one of the races in the first selection, the first and second selections included in the

wager; receiving from each of the plurality of players a bet associated with each of the wagers

(*see col. 6: ln 10-27)*; pooling at least a portion of each bet to form a pool (*see col. 5: ln 59-col.

6: ln 9)*; receiving the results from each race within the racing event; identifying a set of winning

players from the plurality of players by determining which of one or more players of the plurality

of players correctly selected each predicted winner in the second selection for each race within

the first selection (*see col. 7: ln 35-54*); and sending at least a portion of the pool to one or more

identified winning players.

Regarding claims 10-11, Brenner discloses a computer-assisted method wherein the first

selection of the subset of the plurality of races and the second selection of predicted winners for

each race in the second selection is associated with a game card (*see smart card [122] of Fig. 2*

and the related description thereof). Additionally, the data on the game card is transferred to a

computer (*see Fig. 6 and the related description thereof*).

Regarding claims 12, Brenner discloses a computer-assisted method wherein results from

each race within the racing event are input into a computer (*see col. 2: ln 35-50*).

Regarding claim 14, Brenner discloses a placing a wager in an event having races, the

wager comprising a bet that a particular entry selected by a better in each of a plurality of the

races will be a winning entry (*ie: system is capable of placing different types of wagers, and a*

pick-n wager would enable a winning entry if the bettor picks the winning participant in each of

the races), wherein the plurality of races comprise a predetermined number of races that are

selected by the bettor (*see col. 4: ln 22-42, col. 6: ln 1-26*).

Regarding claims 15-16, Brenner discloses a method of accepting bets on an event having

a plurality of event contests, the method comprising: selecting a predetermined quantity of the

event contests for a wager; receiving from a user a selection of event contests, from among the

plurality of event contests to be included in the wager, the number of selected event contests

corresponding to the predetermined quantity of event contests; and receiving from the user a

selection of contestants corresponding to each of the selected event contests (*see col. 4: ln 22-*

42). Additionally, Brenner discloses a method the comprises receiving from the user a bet on the selected contestants (*see col. 4: ln 22-42*).

Regarding claims 25-26, Brenner discloses a system for betting on an event having a plurality of event contests, comprising: a processor operable to determine a predetermined quantity of the event contests for a wager (*see Fig. 27 and the related description thereof*); and an interface coupled to the processor and operable to: receive from the user a selection of event contests, from among the plurality of event contests, to be included in the wager, the number of selected event contests corresponding to the predetermined quantity of event contests (*see col. 4: ln 22-42*); receive from the user a selection of contestants corresponding to each of the selected event contests; and wherein the processor is further operable to determine based on whether a predetermined number of selected contestants won the corresponding selected event contests, if the user is a winner (*see col. 7: ln 35-54*). Additionally, Brenner discloses an interface further operable to receive from the user a bet on the selected contestants (*see Fig. 13 and the related description thereof*).

Regarding claims 27-28, Brenner discloses logic embodied in a computer readable medium, the computer readable medium comprising code operable to: select a predetermined quantity of the event contests for a wager (*see Fig. 10 and 12 and the respective related descriptions thereof*); receiving from a user a selection of event contests, from among the plurality of event contests, to be included in the wager, the number of selected event contests corresponding to the predetermined quantity of event contests (*see col. 4: ln 22-42*); and receive from the user a selection of contestants corresponding to each of the selected event contests; and determine, based on whether a predetermined number of selected contestants won the

corresponding selected event contests, if the user is a winner (*see col. 7: ln 35-54*). Additionally,

Brenner discloses the logic in a computer readable medium comprising code further operable to

receive from the user a bet on the selected contestants (*see Fig. 13 and the related description thereof*).

Regarding claims 2-3 and 22, Brenner discloses a method of wagering on horse races

wherein the predetermined quantity of the event's races included in the wager is less than a total

number of races in the event which is an inherent feature in betting since a wager by nature is a

choosing what the outcome of an event. For example, if one were to choose the entire field of

contestants since it will always be true in a racing event that at least one person in the entire field

will win. Additionally, Brenner discloses a wagering system that discloses a limitation where a

wager queue is used to transmit information from the terminals to the database. Brenner

discloses that in its system a user may place additional wagers but is limited by the state of the

queue to five wagers per form (*see col. 12: ln 9-26*). Brenner states that the wager queue is

physically limited to space for five wagers before any additional wagers may be added and a user

is not limited to only placing five wagers in an event but may only place the predetermined

number of five wagers at one time (*see col. 12: ln 9-26*).

Regarding claims 4-5 and 23-24, Brenner discloses an interactive wagering service that

links up a player's wagers to an account wherein the player is paid if the player's wagers match

the winners of all or some of the races in the wagers they have selected (*see Fig. 31 and the related description thereof*). As a result, Brenner's system pays the players if the predetermined

number of selected winners win corresponding chosen races comprises playing the player if all

of the selected winners win corresponding chosen races (*see col. 4: ln 22-42*).

Regarding claim 17, Brenner discloses a method that comprises paying the user if a

predetermined number of the selected contestants win a corresponding selected event contest

(*see col. 4: ln 22-42*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Brenner et al. (US 5,830,068).

Regarding claims 18-21, Brenner teaches a method and apparatus for accepting bets on

an event having a plurality of event contests. Additionally, Brenner allows a user to select a

predetermined quantity of events for a wager and receive the selection from among a plurality of

event contests and receiving from the user a selection of contestants corresponding to each of the

selected event contests (*see col. 4: ln 22-42*). However, Brenner is silent with regard to changing

the predetermined quantity of event contests after at least one contests has been run. Although

Brenner is silent with regard to this specific limitation, one of routine skill in the art would

simply recognize that this limitation calls for changing the number of remaining contestants still

waiting to complete their respective event. Brenner is clear that the wagers entered into the

system are closely monitored and once a winner has been determined the amount of money is

allotted to the users account. Therefore Brenner also has the ability to track and determine how

many wagers are not complete in a users account. Therefore it would have been a simple matter

of design choice to one of routine skill in the art at the time the invention was made to simply set

up a numerical output displaying how many racing events are still left to run on a users wager.

Claims 7-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Brenner et al. as applied to claims above, and further in view of "TAB: How to Play –

Betting Options".

Regarding claims 7-8 and 13, Brenner teaches a method of wagering on races in an event

having a plurality of races wherein the wager is for at least one dollar. Additionally, Brenner's

system allows for the selection of event races to be included in a wager where a possible winner

is selected for each of the races in the wager (*see col. 4: ln 22-42*). Additionally, Brenner's

system gives a payout to the player if a predetermined number of selected winners win

corresponding chosen races. However, Brenner is silent with regard to the method of wagering

wherein the selected races are not run consecutively.

In an analogous reference, TAB teaches about the different type of wagers that can be

placed on multiple races that are old and well known in the art. TAB teaches about "doubles and

trebeles" or bets which two or three races are designated. Additionally, TAB teaches about the

'pick6' wager in which the selection of the predicted winners of each of six races is made. These

multiple race options simply state that multiple race events may be included in a wager.

Although they do not specifically state that races wagered are not run consecutively it would not

be beyond one of routine to recognize that any combination of racing events could be included in

a multiple race wager as taught above. The idea that the races are run consecutively or not

consecutively does not change the concept of a multiple event wager, which is old and well

known in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of TAB about the different types of multiple races with the invention of Brenner in order to derive the method of wagering wherein the selected races are not run consecutively.

Response to Arguments

Applicant's arguments filed 4/10/06 have been fully considered but they are not persuasive. Applicant argues that applicant's invention differs from a pick 3 and pick 5 or as mentioned in the above action a pick 6. However, the limitation simply calls for allowing a player to choose a plurality of the event's races to be included in the wager, wherein the player is required to choose a number of chosen races equal to the predetermined quantity". Both Boylan and Brenner meet this feature, as both systems call for the implementation of these "pick n" bets. As the player is allowed to choose from a list of wagering types and if a "pick n" wager is chosen the player is required to choose "n" contestants from the various races that were part of the pick n wager. The applicant's representative also argues that Boylan does not allow "a player choose which of the event's races that player would like to make a wager on". Boylan and Brenner as stated above, also incorporate this feature as a wager is only made if the player has selected the wager on the interactive screen. It then follows that these systems are adapted to allow a player to make any type of wager they see fit to make. Thus Boylan and Brenner both meet the features of the invention however, the examiner has elected to choose Brenner as the reference that has most closely anticipated the applicant's invention. Additionally, the applicant seems to point to the inconsistency in which a pick 3 or a pick 5 bets do not qualify as anticipating the claimed invention. The claimed invention allows a user to make a wager on a plurality of racing events

to be included in a wager. This can be read as simply allowing a player make bets or a wager that includes the aspects of all racing events in one single wager. If it is the later, the pick n bets which the applicant's representative is so adamant about being different is not seen by the examiner. A "pick n" bet is simply a wager that the player picks the winner of 'n' races. If the player has selected a predetermined amount (*ie: 5 out of 6* winners) in his/her wager then they have met the conditions of the winning ticket. Examiner does not see how this does not meet the limitations of "receiving a first selection of a subset of the plurality of races within the racing event from each of the plurality of players, the number of races in the first selection corresponding to the predetermined quantity of event races in the wager". Applicant then contends that the systems do not meet the limitation of allowing "a player to choose which of the event's races the player would like to make a wager on". However, as shown in the figures of Boylan and Brenner, the player is free to make any type of wager they see fit on the interactive screen therefore they are making a choice as to which event's the player would like to make a wager on.

With regard to applicant's arguments towards Brenner, in claims 25, applicant claims that Brenner fails to disclose a processor "operable to determine, based on whether a predetermined number of the selected contestants won the corresponding selected event contest, if the user is a winner". This is erroneous as Brenner clearly states that is it able to keep track of all wagers on its system. As previously pointed before, once the wagers are placed in the system, Brenner's system then upon a winning condition (*ie: a predetermined number of the selected contestants won the corresponding selected event contests*), the user is credited with the winnings into their respective accounts (*see col. 7: ln 35-55*).

With regard to the arguments of claim 6, Boylan and Brenner as discussed previously above do meet the limitations of the claims and the arguments are not persuasive.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Stronach (WO 00/67215) – Multimedia Wagering System.

Any inquiry concerning this communication or earlier communication from the examiner should be direct to Ryan Hsu whose telephone number is (571)-272-7148. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P Olszewski can be reached at (571)-272-6788.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, contact the Electronic Business Center (EBC) at 1-866-217-9197 (toll-free).

RH

SCOTT JONES
PRIMARY EXAMINER

November 15, 2006